## STATE OF NEBRASKA

## DEPARTMENT OF INSURANCE

Bruce R. Ramge Director

## Dave Heineman Governor

## N-O-T-I-C-E

TO: All Interested Parties

FROM: Bruce R. Ramge

Director of Insurance

DATE: December 8, 2014

SUBJECT: Interpretation of "Covered Service" in New Laws About

**Dental Plans** 

Recently enacted Neb. Rev. Stat. § 44-3805(3) (2010) and § 44-7,105 (2012) prevent prepaid dental service plans, insurance policies, self-funded employee benefit plans, and prepaid limited health organization plans from dictating the price of dental services that they do not cover. Sections 44-3805 and 44-7,105 do not provide a definition of the term "covered service." Insurance and dental professionals implementing § 44-3805 and § 44-7,105 have discovered that "covered service" is subject to two interpretations.

- 1. "Covered service" could be defined as any service for which the insurer or plan actually covered (paid) part of the dental provider's bill, with "noncovered service" defined as any service for which the insurer pays no money to the dental provider.
- 2. "Covered service" could also be defined as any service covered in the contract, with "noncovered service" defined as any service for which the contract does not provide payment under any circumstances.

For example: Jane's dental policy provides maximum benefits of \$1,000 per year. Jane already received the \$1,000 in benefits this year, so she will pay out of pocket for any additional dental services. Jane goes to her dentist to have a tooth repaired. Fillings are covered under Jane's policy, but because Jane has exceeded her annual maximum, she will pay the entire bill. Under definition (1), the filling is not "covered" because the insurer is not paying the bill, so Jane's insurer cannot dictate the fee Jane's dentist charges for the filling. Under definition (2), the filling is "covered" because the insurance policy pays for fillings when the patient has not exceeded annual benefit limits, so Jane's insurer can require the dentist to charge only the contracted rate for the filling.

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The Department allows dental plans to use either definition of "covered service" in provider contracts. This approach is based on testimony describing "covered services" in the legislative history for LB813 (codified at § 44-3805(3)) and LB810 (codified at § 44-7,105).

The Department will continue to interpret § 44-3805(3) and § 44-7,105 to allow either definition of "covered services" until a definition is supplied by the Legislature or the courts.

If you have any questions about this Notice, please contact Laura Arp at (402) 471-4635.